all points of comfort and convenience.[12] The same principles appear applicable to Pullman and other sleeping cars, for if these luxuries are provided, they are open to all passengers without discrimination as much as ordinary coaches.[13] In the recent case before the United States Supreme Court, the argument in favor of the statute was based upon the comparatively negligible demand for Pullman accommodations by negro passengers. But the demand which such cars are installed to meet is created by the traveling public. If the demand is sufficient to warrant the furnishing of Pullmans at all, to exclude however minute a portion of that public simply because of color seems to be sheer discrimination. The *dictum* of the majority in the principal case therefore appears correct.

If then these statutes are unconstitutional, it would seem that a practical problem of some difficulty faces those states which desire segregation of the races in Pullmans. To require the railroad to duplicate its Pullman accommodations in the face of a considerable financial loss, because of the little or no demand for "black" Pullmans, although a considerable white patronage existed, would savor strongly of a deprivation of property without due process of law.[14] So if the Jim Crow laws apply to Pullmans, the railroad would seem justified in refusing such service until the demand was sufficiently great to make feasible the installation of separate cars at at least a nominal profit. But in many cases the whites would then not be properly accommodated, and the railroad would be losing profits which the traffic was willing to pay. Thus the railroads may be induced to offer a practical solution of the difficulty by partitioning off for negroes a portion of the same Pullman coach sufficient to meet what small negro demand arises. Even if segregation laws are not applied to Pullmans, if we assume a public opinion which finds expression in such statutes, the railroads' problem is still to segregate the negro or lose entirely its white patronage. It seems, therefore, that although the situation may be handled by statute, a desire for the profits of this white patronage would be a sufficient incentive to cause the southern railroads on their own initiative to devise, even more effectively, ways and means for a practical solution.[15]

THE INTERSTATE COMMERCE COMMISSION'S ANNUAL REPORT. — The dramatic conflict of large economic forces centering in the recent

[12] *Cf.* Murphy *v.* Western & A. R. R. 23 Fed. 637, 639; Gray *v.* Cincinnati Southern R. Co., 11 Fed. 683, 686.

[13] Nevin *v.* Pullman Palace-Car Co., 106 Ill. 222; see Pullman Palace-Car Co. *v.* Lawrence, 74 Miss. 782, 802, 22 So. 53, 57.

[14] See Smyth *v.* Ames, 169 U. S. 466, 526.

[15] A complication not directly presented by the principal case is the application of the interstate commerce clause to Jim Crow statutes. This question is usually avoided, as it was here, by construing the statutes as including intrastate passengers only. Louisville, N. O. & T. Ry. *v.* State, 66 Miss. 662, 6 So. 203; Chesapeake & O. Ry. *v.* Kentucky, 179 U. S. 388. But the recent decision in the Shreveport Rate Cases, 234 U. S. 342, 28 HARV. L. REV. 34, 294, would seem to have a bearing on the question. If the negro traveling to A., which is across the state line, is exempted from the Jim Crow statutes, may he not prefer A., as a trading center, to B., which is within the state? Thus, though only a regulation of intrastate travel, it might well interfere with interstate regulations.

railway rate controversies before the Interstate Commerce Commission has focused attention on this branch of the Commission's work.[1] The extent and diversity of its routine activities, however, are often overlooked in public discussion. Yet they involve administrative, judicial, and legislative problems of great complexity and legal significance. As summarized in its last annual report,[2] they show in a striking manner how important a place in the machinery of our federal system of jurisprudence the Interstate Commerce Commission has achieved.

The duty to serve the public without discriminating between place, person, or class is fundamental in the modern conception of a common carrier; and much of the Commission's labor is devoted to enforcing this duty. Congress has forbidden discrimination in general terms;[3] the Commission must decide whether a given tariff is in fact discriminatory.[4] Congress has decreed that no carrier shall depart from published tariffs;[5] the Commission must decide whether, in a particular instance, money collected in accordance with the published tariffs should be refunded because, for one cause or another, the charge was unreasonable.[6] Congress has declared that no railroad shall charge less for a long haul than for a shorter haul included therein;[7] it has given the Commission power, in special cases, to allow exceptions to this rule.[8] The Commission's task, in part legislative and in part judicial, requires it to solve a tangled conflict of economic interests, to balance broad principles of social and commercial policy, and to apply the resultant to a set of business facts of a complexity that often baffles analysis. Aside from these duties, the Commission is charged with the important administrative task of ferreting out the still persistent rebate evil. Fifty-eight indictments, — twenty against carriers and thirty-eight against shippers, passengers, or other parties, — were found during the eleven months covered by the report, based on evidence submitted to prosecuting attorneys by the Commission. Sending less-than-carload shipments at carload rates, billing goods to fictitious destinations, false classification of shipments, leasing of terminal facilities to shippers at less than cost, "official graft" of various hues and kinds, and what the Commission aptly terms "smokeless rebates" in the form of excessive

[1] The findings of the Commission in the so-called Five Per Cent Case, 31 I. C. C. 551, 32 I. C. C. 325, are discussed in 28 HARV. L. REV. 97, and in this issue of the REVIEW, p. 413.

[2] TWENTY-EIGHTH ANNUAL REPORT OF THE INTERSTATE COMMERCE COMMISSION, issued Dec. 10, 1914. Owing to a change in the date of issue, the report covers only the eleven months from Dec. 1, 1913, to Oct. 31, 1914.

[3] Sections 2 and 3 of the ACT TO REGULATE COMMERCE (1887), 24 U. S. STAT. AT L., 379.

[4] This question was involved in most of the 882 complaints on the Commission's "formal docket" adjudicated during the eleven months covered by the report, and in many of the 7,600 informal complaints adjusted by correspondence.

[5] ELKINS LAW (1906), 34 U. S. STAT. AT L., 586.

[6] The Commission disposed of 5,604 applications involving this question during the eleven months of the report.

[7] Fourth section of the ACT TO REGULATE COMMERCE, *supra*, as amended by Sec. 8 of the MANN-ELKINS ACT (1910), 36 U. S. STAT. AT L., 547.

[8] The Report mentions 1,086 orders issued by the Commission under this section. See especially Fourth Section Violations in the Southeast, 30 I. C. C. 153.

allowances on damage claims,[9] are some of the ingenious subterfuges enumerated in the report by which shippers have sought to defraud carriers, or carriers to favor individual shippers. The enumeration shows that what has been described as "the most prolific source of evil known in transportation," [10] is unfortunately not yet a thing of the past.

Rivaling in importance the duty not to discriminate, is the obligation imposed on carriers to make reasonable provision for the safety and welfare of patrons and employees. In recent years, this general common-law duty has become more and more crystallized by legislation into a specific duty, under pain of prosecution, to maintain certain fixed standards of equipment and management. The Commission endeavors to enforce these standards, by searching for violations of the various regulating statutes and referring the collected data to prosecuting officials; [11] by investigating train accidents and reporting causes and suggesting cures; [12] and by informally pointing out to railroad officials defects in equipment where prosecution is deemed inadvisable. Since 1911, also, a nation-wide system of boiler inspection has been conducted by the Commission, with gratifying results.[13]

Financial and accounting reforms, and reforms in the technique of railway administration, make up a third group of the Commission's activities. They range from the giving of informal assistance, through an expert employed by the Commission, in the intricate task of unifying freight classification, and the revision of prescribed accounting systems under the Hepburn Act,[14] to the more spectacular investigations of the financial affairs and practices of railroad systems from New England to the Pacific.[15] There should be mentioned also the formidable task of supervising the installation of the system of classifications, rates, and regulations for express companies prescribed in 1913. Even more arduous is the duty placed upon the Commission by Sec. 20 of the Panama Canal Act, prohibiting railroad ownership or control of competing water lines, except where, in the Commission's judgment, the public interest warrants exemptions.[16] The Commission is investigating, under this Act, fifty-eight applications, embracing seventy-nine water-

[9] The Commission points out the significant fact that from 1900 to 1913, roughly the period in which rebating has been most vigorously prosecuted, payments for loss and damage have jumped from $7,055,622 to $30,885,454, and expresses the belief that many claims are paid "not because the carriers feel that the claims are valid, but because claimants threaten to divert traffic unless claims are paid."

[10] RIPLEY, RAILWAYS: RATES AND REGULATION, p. 188.

[11] SAFETY APPLIANCE ACT (1893), 27 U. S. STAT. AT L., 531; amended 1896, 29 U. S. STAT. AT L., 85; ASH PANS ACT (1908), 35 U. S. STAT. AT L., 476; HOURS OF SERVICE ACT (1907), 34 U. S. STAT. AT L., 1415–1417.

[12] Sixty-three such accidents were investigated during the period covered by the report.

[13] Required by the BOILER INSPECTION LAW (1911), 36 U. S. STAT. AT L., 913. During the three years' operation of the statute, accidents due to boiler defect have been reduced 35 per cent, with a reduction of 75 per cent in the number of deaths resulting, and of 39 per cent in the number of injured.

[14] 34 U. S. STAT. AT L., 593 (1906).

[15] Thirty-five such investigations have been concluded during the past year, or are still pending. Of these, nine were in response to resolutions of the House or Senate, and the remainder were initiated by the Commission.

[16] 37 U. S. STAT. AT L., 566 (1912).

line interests, each involving knotty problems of corporate and financial interrelation.

What is perhaps the largest single task imposed on the Interstate Commerce Commission in the twenty-eight years of its existence deserves final mention: the physical valuation of the whole system of interstate carriers.[17] The report shows this monumental undertaking already well under way. To establish the present cost of reproduction of the railways, the country has been divided into five districts, and eight engineering field parties in each district are making inventories of the railroad property.[18] To establish the original cost, to date, of each piece of railroad property, as called for in the Act, a staff of accountants is at work on the books of the railroads in each district.[19] Finally land experts and attorneys are appraising railroad lands and rights of way, determining both present value and actual cost, if any, to the railroad. The result should be a Domesday Book of the American transportation system hard to overestimate in its economic, legal, and legislative consequences.

FAILURE TO REGISTER STOCK TRANSFERS. — In transferring stock of a corporation the proper change on the register is often omitted; and from this, legal complications may ensue in determining the owner upon whom various forms of stockholders' liability shall fall. The question may arise when the corporation or its receiver is assessing the stockholders. Although the owner of the shares has made a *bonâ fide* transfer of them, if no change is made on the corporation's books provided for the purpose, he still retains the legal title, though the equitable title goes to the purchaser.[1] If no notice of the sale has been given to the proper corporate officer, it has been held both that the legal owner of record is liable, much as any other trustee of the stock would be,[2] and that the beneficial owner can be held as well,[3] although there can of course be no double recovery. If the former has to pay, he has the right to reimbursement or exoneration from the latter;[4] allowing a direct right against the beneficial owner is therefore a legal short-cut in place of equitable execution by the corporation upon this right of the registered owner.[5] If, however, the corporation has been properly notified of the transfer, the failure to transfer on the books is the corporation's own fault; and it would seem clear that when no creditor's rights are affected the book owner should not be liable for assessments, as the corporation is

[17] Required by Sec. 19 (*a*) of the ACT TO REGULATE COMMERCE, as amended 1913, 37 U. S. STAT. AT L., 701.

[18] The Commission expects soon to more than double the number of field parties in each district.

[19] The Commission suggests tentatively that this detail of the valuation program may involve "an expenditure out of all proportion to the value of the results."

[1] See Black *v.* Zacharie, 3 How. (U. S.) 483, 513.

[2] Visalia & T. R. Co. *v.* Hyde, 110 Cal. 632, 43 Pac. 10; Brown *v.* Allebach, 166 Fed. 488.

[3] Ohio Valley Nat. Bank *v.* Hulitt, 204 U. S. 162; Brown *v.* Artman, 166 Fed. 485.

[4] Kellog *v.* Stockwell, 75 Ill. 68.

[5] See 22 HARV. L. REV. 608.